IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

Crl.MC.No. 2980 of 2006()

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CC.228/2005 of CHIEF JUDICIAL MAGISTRATE COURT-I, KOZHIKODE

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PETITIONER: 2ND ACCUSED:

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MR. KUNHALAN.M,
MANIPARAMBATH, VENNIYOOR P.O.,
VALAKULAM (VIA), MALAPPURAM-676508.

BY ADV. SMT.SREEKALA KRISHNADAS

RESPONDENTS: STATE & COMPLAINANT

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STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.KAMAPPU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**Crl.M.C.No.2980 of 2006**

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Dated this the 29th day of March, 2007

**ORDER**

The petitioner is the 4th accused in a prosecution for the offence punishable, inter alia, under Section 332 read with 149 I.P.C and Section 3(1) of the P.D.P.P Act. The crux of the allegations against the petitioner is that he was a member of an unlawful assembly of persons who had allegedly thrown stones at a K.S.R.T.C bus, which was passing by. The petitioner along with co-accused was allegedly arrested by the police officials in the course of the incident in which they had allegedly committed the crime.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He happened to be present at the scene of the crime, a busy market centre, only because he had gone there to purchase medicine for his daughter. He has nothing to do with the incident that had taken place. He had been unnecessarily arrayed as an accused. Counsel brings to the notice of the Court certain news paper reports which show that the petitioner had complained even at the earliest stages that he was not involved in the incident.

3. The case diary has been placed before me for my perusal. The F.I statement as well as the statements of witness recorded do indicate that the miscreants who were allegedly found indulging in culpable overt acts were caught by the police personnel and arrested. They included the petitioner herein also. At the moment and with the available inputs, I do not find any warrant for invoking the extraordinary inherent jurisdiction available to this Court. Disputed questions of fact cannot obviously be attempted to be resolved by invoking the extraordinary inherent jurisdiction available to this Court.

4. The learned counsel for the petitioner prays that if insistence on personal appearance of the petitioner were made, it would cause great hardship and prejudice to the petitioner. I have no reason to assume that the learned Magistrate would insist on such personal appearance unnecessarily. No Court should unnecessarily insist on the personal appearance of the accused unless such personal presence is necessary for the progress of trial in the case. It is for the petitioner to apply for exemption before the learned Magistrate and the learned Magistrate must consider such application in accordance with law and on merits. Unnecessary personal appearance should not be insisted by any criminal Court.

6. This Crl.M.C is, in these circumstances, dismissed. I may hasten to observe that the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioner to raise all appropriate and relevant contentions before the learned Magistrate. I have only chosen to hold that powers under Section 482 cannot and need not be invoked in favour of the petitioner.

**(R.BASANT, JUDGE)**

rtr/-